Supreme Court, U.S.
FILED

No. 94 772 OCT 26 1994

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# IN THE

# Supreme Court of the United States

OCTOBER TERM, 1994

TEDDY WATSON

Petitioner

V.

DANIEL THOMAS

Respondent

## PETITION FOR WRIT FOR CERTIORARI FROM SUPREME COURT OF ALABAMA

## PETITION FOR WRIT OF CERTIORARI

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35 pp

## QUESTIONS PRESENTED

I. Whether Petitioner Watson's due process rights under the 5th and 14th Amendments to the U.S. Constitution in the courts were violated below when the Honorable Judge did not take the case out as a matter of law on directed verdict according to the true facts in the case that there was no conversion of cows by Watson who was directed by Mr. Pruitt from the State of Alabama to have the cows penned since no branding of cows by using stray cattle statute, i.e. can there be a conversion when the stray cattle statute of Alabama was used [See § 3-2-1 and 3-5-6, Code of Alabama, 1975]?

II. Whether the relevance of Watson's prior income taxes were prejudicial and confusing and it was judicial error in the instant case to allow exhibits unrelated to conversion and thus again Mr. Watson's due process rights under the 5th and 14th amendments to the U.S. Constitution were violated?

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## PARTIES TO THE PROCEEDINGS

The Petitioner is Teddy Watson who was the Plaintiff and Appellant below.

The Respondents are Daniel Thomas who was the Defendant and Appellee below.

## ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

No.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1994

TEDDY WATSON

Petitioner

v.

DANIEL THOMAS

Respondent

## PETITION FOR WRIT FOR CERTIORARI FROM SUPREME COURT OF ALABAMA

## PETITION FOR WRIT OF CERTIORARI

### OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below into this Writ of Certiorari.

## JURISDICTION

Reversal and review is sought from the final decision from the Supreme Court of Alabama, the highest court in Alabama who originally denied the Writ. Jurisdiction is invoked under 28 U.S.C. § 1257 as Writ.

## Constitutional Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of

... property without DUE PROCESS OF LAW: nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

## STATEMENT OF THE CASE

In Lowndes County, Alabama, Petitioner Watson and Respondent Thomas were co-joining landholders i.e. Watson and Thomas owned or controlled land adjacent to each other. Before 1990, Watson and Thomas had worked together on fencing and roads. However, after 1990, the relationship between Watson and Thomas ceased and there was no communication between them.

"On April 3, 1991, Watson called the Department of Agriculture and asked them to help get some cattle off his property which were not his. At this time, the State authorities informed Watson to pen the cattle when he caught them.

"On April 15, 1991, Watson advised Thomas, at a meeting, that if he found any cattle on the leased land, he would pen them and take them to the stockyard.

[Quotes from brief of William Nichols to Supreme Court of Alabama]

On June 8, 1991, J.E. Wood penned some cattle he found on Risher land and Bobby Pruitt of the

Alabama department of Agriculture directed Watson to take the cattle to the stockyard, after visiting the pen and checking cattle for brands June 9, 1991. The cattle were taken to the stockyard and later sold by Thomas -- Note, Thomas had reported 70 cattle as stolen and being branded 5-30-91. Thomas claims these cattle were on and removed from his property on June 8, 1991. Thomas claims to be missing a total of 69 head of cattle. Hooper Auction interplead the proceeds and both Thomas and Watson cross claimed.

Watson was charged with conversion by a jury tria and Watson appealed to Alabama Court of Civil Appeals who wrongfully affirmed; then, the case was sent as Writ of Certiorari to the Supreme Court of Alabama who denied the Writ. [See the Appendix for details of case below].

## STATEMENT OF THE FACTS

On April 2, 1991, Petitioner Watson who leased land from and employed by Paul Brouha ["the Richer land"], was notified by Coral Brouha some cows were on this land. Coral Brouha requested Watson obtain someone to remove cattle from Richer land.

On April 3, 1991, with and under Bobby Pruitt authority Watson attempted to catch the cows with the help of J.E. Woods [T, p. 78]; however, no cows were caught at that time.

On April 4, 1991, Chavers called Watson from the Alabama department of Agriculture and Mr. Chavers stated that he could catch the cattle and transport them to Hooper Stockyard. [T, p.82], [Defendant exhibit #1, p. 415, Vol. II of Court Record.]

Thomas Exhibit #1 and 21 were Alabama Uniform incident/offense report, Alabama Department of Agriculture Livestock officer C.E. "Buck" Chavers as reporting officer. Exhibit #1 was admitted into evidence as a signed report. [T, p. 388). Testi-

mony given on (T, p. 81) had already establish exhibit #1 was not a signed report. Exhibit #1 (p. 415, vol. II Court record) is not a signed report.

Thomas Exhibit 21 was not admitted into evidence (T, p.400) and was not a signed report. Deposition testimony established C.E. "Buck" Chavers was the the main investigator in this case. Chavers was listed on both attorneys pre-trial witness lists [P. 62, 63 and P. 69,70 court records]. Mr. Chavers was not called to testify in this trial.

On April 15, 1991, Watson and Thomas met on the Risher property to discuss cattle. [T,p. 79]. "On June 8, 1991, Woods contacted Bobby Pruitt of the department of Agriculture who visited the penned cattle, which had been caught June 8, by J.E. Woods. Woods was directed to send the penned cows to the stockyard for safe keeping by Pruitt June 9. Pruitt testified that the astray law entitled them to carry the stock to the stock-yard. [T. p. 392]

Watson never received or attempted to rece proceeds from sale of Thomas cattle. (P. 91 92 of the court records).

The jury was mislead with Exhibit #12, Wats 1991 tax return (T, p. 221-223). This was pre dicial (T, P.210-220). Exhibit #12 in the cou records (P. 436-456), Exhibit #12 shows Watso had 80 or more cattle and total sales were $35,560.00 in 1991.

A judicial error was made in the appeal cou on page 7 of Albert S. Butler Appeal Brief (T p. 224-227), "The Appellants Tax Records for 1991 were offered and admitted for impeachmen purposes."

On pages 224-227 of transcript, Watson's CSX deposition was offered and admitted as Exhibit #12. Watson's CSX deposition is not in Court Records.

The jury was mislead by the court in its charge as to Alabama Statutes in regards to astryas. Watson claims this was a deliberate act. (T, p. 619-624).

## REASONS FOR WRIT OF CERTIORARI

Can there be conversion by Watson who was acting under the direction of a state of Alabama agent directing cattle be moved under a state statute and under Risher land owners instruction?

All issues will be discussed together as to violation of due process in the court.

Conflict of law as to

1. Affirming the trial court's judgment for conversion by the jury in the instant case, i.e. did the instant case constitute conversion under the facts of this case? The bottom line is whether there was profound judicial error when the Honorable Judge must have noticed that the jury made an error in finding Watson of conversion since he had been instructed as a employee of the Rischer land owners and directed by a state agent, Pruitt, to pen cows who were ASTRAYS AND HAD NO BRANDS that judge should have made a directed verdict based on facts and law that Watson could not have converted any cows while Watson was acting under the

color of state law so that the unbranded cows could have their ownership determined and safe keeping in the state stockyard.

The instant case should have been decided as a matter of law whether first impression or not by directed verdict instead of a wrongful factual determination by a jury that did not understand al the facts because of the confusing and prejudicial tax record of Watson's 1991 tax and also the two incident reports, especially since Mr. Thomas had filed a missing of 70 cows, nine (9) days befo the 26 cows were penned at the request of the state agent, Pruitt. Thomas clamed a total of 69 head of cattle missing. 26 head of cattle were removed from Risher property June 8, 1991. In Deposition Thomas testified "There were only 26 missing until the 8th of June [D p. 61, line 8-10). What happened to the 43 phantom cows?

Mr. Watson's right to due process under the 5th and 14th amendments to the U.S. Constitution were violated because of the judicial error of the Judge

not taking the case out on directed verdict according to the true facts in the case that there was no conversion when Mr. Watson was directed Rischer landowner and Mr. Pruitt to have the cows penned.

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process.

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its

**necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)**

A directed verdict is similar to a summary judgment except a directed verdict comes at the end of trial and the summary judgment which has the following elements comes before a trial.

Further, it was an abuse of process for the Judge to allow the jury to make a wrong decision on the facts by finding Mr. Watson guilty of conversion when there was no conversion by Mr. Watson who was acting under the direction of Mr. Pruitt, the state agent, and Risher land owners to pen the cattle.

**The elements of summary judgment are found in the following Alabama two cases:**

**See Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985), which states,**

**"To grant summary judgment, trial court must find that there is no genuine issue of material fact and that movant is entitled to judgment as matter of law. Rules Civ. Proc., Rule 56."**

**Also see Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984), which states,**

**"Summary judgment is proper when there is no genuine issue of material fact and moving part is entitled to judgment as matter of law; all reasonable doubts concerning existence of genuine issue of fact must be resolved against moving party. Rules Civ. Proc. Rule 56 (c)."**

**See Hightower & Co. v. U.S. Fidelity & Guar., 527 So. 2d 698, at 699 (Ala. 1988), which states,**

**"Granting Summary Judgment is nondiscretionary function of trial court, and no presumption of correctness attaches to such decision upon appellate review. Rules Civ. Proc., Rule 56 (c)."**

Because of the lack of due process under the 5th and 14th amenments to the U.S. Constitution when a directed verdict should have been made by the Honorable judge, and because of the abuse of

process in claiming Mr. Watson converted cows which he had no intention of using is a clear violation of Mr. Watson's rights to have a fair and just trial in the courts, and therefore the 42 U.S.C. § 1983 claims are valid. [Supplemental Brief was filed in the Supreme Court of Alabama July 22, 1994, showing constitutional violations and that 42 U.S.C. § 1983 claims are valid.]

**See 42 U.S.C. § 1983, which states,**

**"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other proper proceeding for redress."**

See Paul v. Davis, 424 U.S. 645, 96 S Ct 1154, 47 L Ed 366 (1976).

The civil rights act of 1871 (42 U.S.C.A. § 1983) does not create substantive rights, but provides express federal remedy against state officials for deprivation of rights established elsewhere in federal law. See Samuels v. District of Columbia, 770 F. 2d 184, C.A.D.C., 1985.

See book Section 1983 Litigation: Claims, Defenses, Fees, M.A. Schwartz, John E. Kirklin, John Wiley & Sons, 1986, on p. 101, states,

"§5.9 Tests to Determine State Action -- In General... The Court did state that, to find state action, two general requirements must be fulfilled. First, "the deprivation must be caused by the exercise of some right or privilege created by the state or by a person for whom the state is responsible. [See Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, (1982).] Second, the defendant "must fairly be said to be a state actor.

**See Monroe v. Pape, 365 U.S. 167, 172 (1961) "The Two principles "collapse into each other when the claim of a constitutional deprivation is directed against a party whose official character is such as to lend the weight of the state to his decisions."**

See Rice v. Birmingham Coal and Coke Company, Inc., 608 So. 2d 713 (Ala. 1975). which held that conversion is a wrongful taking or wrongful detention or interference, an illegal assumption of ownership or illegal use or measure of another's personal property. Also see Stallworth v. Continental Real Estate Management, Inc., 582 So. 2d 534 (Ala. 1991).

See Shabazz v. Payne, 607 So. 2d 238 (Ala. Crim. App. 1992) that bare possession of property without some wrongful act in acquisition of possession, [note- State of Alabama had possession], or its detention, and without illegal assumption of ownership or illegal use is not conversion.

Petitioner Watson did not illegally take any cows and Watson contacted the Alabama Department of Agriculture before any cows were caught. (T, p 82). The evidence showed in Defendants Exhibit 1 that Watson was directed by state agent to catch the cows and take them to a stockyard.

See Ala. Code (1975) §3-2-1 which states, that "Any person who finds animals at large about premises which he has charged... may take up such an animal as an astray."; therefore, Watson had the right to catch the cows. Also see Ala. Code, §3-5-3, §3-5-6 which also gives an owner such a right.

Because Watson acted under the right to pen the cattle conferred by Ala. Code, §3-2-1, §3-5-3 and §3-5-6, (1975).

See Glover v. Pugh, 122 So. 2d 147 (Ala. 1960), held that mere presence of the cattle at large

and uncontrolled on the land without the land owners consent is all that is required to confer upon the landowner the right to take possession of the trespassing cattle.

Petitioner Watson did not receive or attempt to receive any benefit or proceeds from the sale of the cattle, and State of Alabama had possession and therefore there was no conversin since Watson received no benefit from the sale of cows. See Rice v. Birmingham Coal and Coke, Inc., Supra.

Since Watson contacted the Department of Agriculture within five days of the capture of the cows, the Department of Agridulture, not the owner, has the responsibility to locate the true owner of the cattle (Ala. Code, § 3-5-3, (1975).

No evidence supported any finding of conversón, and the Hon. Judge erred by not making a directed verdict as a matter of law because the astray and stock laws specifically authorized the actions of Watson, especially when a Richer land owners had requested and a state agent had

directed Watson to penn the cows.

The Honorable Supreme Court should take original jurisdiction of this instant case, and acquit Watson of charges of conversion since there was no conversion of Watson as a matter of law as stated in this Writ; therefore, this writ should be granted and Watson allowed to write a Merit's brief because Watson's due process rights in the court have been violated under the 5th and 14th amendments of the U.S. Constitution which triggers the 42 U.S.C. § 1983 civil rights claims.

The Honorable Court of Civil Appeals failed to notice that the admission of the 1991 taxes of Mr. Watson had absolute nothing to do with how many cows were penned on June 8, 1991, and further the admission of his taxes concerning his own cattle and sales of his cattle were confusing and prejudicial to the jury since the taxes should never have been admitted since the jury would not understand brood cows, sales, and depreciation of cattle.

## CONCLUSION

The Writ of Certiorari should be granted for the above reasons, and the Petitioner should be allowed to write the Merits brief so that the instant case can be reversed and remanded to the trial court for all triable issues before a jury.

Respectively submitted,

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APPENDIX I

ALABAMA COURT OF CIVIL APPEALS

October term, 1993, 94

AV 93 000143

Teddy Watson

Appellant

v.

Daniel Thomas and Cecile Thomas

Appellees

Appeal from Lowndes Circuit Court

(CV-92-03)

HOLMES, Retired Appellate Judge

The present case began when Hooper Auction Company, Inc. (Hooper), filed an action for declaratory judgment and interpleader regarding proceeds from the sale of certain cattle in June 1991. The action named Daniel Thomas and Teddy Watson as defendants.

Thomas and Watson answered and filed cross-claims. Thomas alleged in his cross-claim that in June 1991 Watson had wrongfully converted 26 head of cattle belonging to Thomas by penning and hauling these cattle to the

auction. In his cross-claims Watson requested damages for slander. Watson also requested, pursuant to Ala. Code 1975, §§3-2-4(c) and 3-5-3, compensation for the damage to his crops, which he alleged, was caused by the cattle.

Hooper deposited the proceeds from the sale with the clerk of the court. The trial court dismissed and discharged Hopper from any further and additional liability in the matter.

The case proceeded to a trial by jury on the cross-claims filed by Thomas and Watson. The jury returned a verdict in favor of Thomas and against Watson and assessed damages in the amount of $15,591.

Watson appeals. This case is before this court pursuant to Ala. Code 1975, § 12-2-7(6). We affirm.

The dispositive issue is whether the actions of Watson supported a finding that Watson was

liable to Thomas for conversion of the 26 head of cattle owned by Thomas.

In order to establish a claim of conversion, the plaintiff must prove that the defendant exerted control over property to which the plaintiff had title and of which the plaintiff was entitled to immediate possession. Rice v. Birmingham Coal & Coke Co., 608 So. 2d 713 (Ala. 1992).

Watson argues that his actions do not constitute conversion because when he penned the cattle and transported them to the stockyard, he was acting under the directions of an investigator for the State of Alabama Stockyard and Brands. Watson further contends that his actions did not constitute conversion because he was given the right to pen the stray cattle under Ala. Code 1975, §§ 3-2-1 and 3-5-6.

Section 3-2-1 provides, in pertinent part:

"Any person who finds running at large about... the residence or premises of which he has charge any cattle, ... the owner of

which is unknown, may take up such animal as an estray to be disposed of as provided in sections 3-2-2 through 3-2-4."

(Emphasis added.)

Section 3-5-6 provides, in pertinent part:

"Any person who is... in the lawful possessions of any land or the agent of any such person shall have the right to take possession of any livestock or animal found at large, uncontrolled, ... on the premises of which he has charge and the owner of such livestock or animal, when so taken up, shall be personally notified ... within 24 hours after the taking up of such livestock or animal, and by posting notice as provided in sections 3-5-8."

(Emphasis added.)

At trial, Watson admitted that when he penned the cattle in June 1991, he did not contact any of the adjoining landowners to inquire as to whether they had any cattle missing.

Watson also admitted that he had a feeling that the cattle belonged to Thomas because cattle belong to Thomas had been on the property on previous occasions, but he was not absolutely certain that the cattle belonged to Thomas and he did not contact Thomas.

At trial, Thomas testified that there were several occasions between March and June 1991 where either his fance was cut and pulled back or his gap was left open. Thomas also testified that other cattle were missing between March and June 1991. We would note that Thomas testified that on the evening before Watson penned the cattle, Thomas was near his property line, that he noted there was nothing wrong with the fence, and that the gap was tightly closed. However, when he checked the area the next morning, the gap was open, and there was an empty feed sack at the property line.

We would also note that while Watson and Thomas had a good relationship in the past, that relationship had deteriorated by 1991. In fact,

the parties did not get along well at all.

The role of the jury is to consider all the evidence and to draw its own conclusions therefrom. Star Freight, Inc. v. Sheffield, 587 So. 2d 946 (Ala. 1991). The jury is to determine the weight to be accorded the testimony of the witnesses. Star Freight, Inc., 587 So. 2d 946.

In the present case, as seen from the above, there was evidence and reasonable inferences therefrom to support the jury's finding that Watson was guilty of conversion of the 26 head of cattle belonging to Thomas.

Watson raises two other issues. He contends that the trial court erred when it allowed certain expert testimony regarding crop damage because the witness was not properly qualified as an expert witness. However, the trial court is accorded broad discretion in deciding who is qualified to testify as an expert, and its determination will not be disturbed on appeal unless the trial court abused its discretion.

General Motors Corp. v. Johnston, 592 So. 2d 1054 (Ala. 1992).

Watson also contends that the trial court committed reversible error when it admitted his tax returns into evidence. The trial court is granted wide discretion in determining the relevancy of the evidence, and its determination will not be disturbed on appeal unless it is clear that error was committed. Harper v. Baptist Medical Center-Princeton, 341 So. 2d 133 (Ala. 1976). Further, we note that the trial court is given broad discretion in excluding or admitting evidence on issues litigated in the case. Ryan v. Acuff, 434 So. 2d 1244 (Ala. 1983).

After reviewing the record, we find that if the trial court erred in admitting the above evidence, such error was harmless error. Rule 45, A.R.A.P.

In view of the above, this case is due to be affirmed.

Thomas's requests for attorney fees is denied.

The foregoing opinion was prepared by Retired Appellate Judge Richard L. Holmes while serving on active duty status as a judge of this court under the provisions of § 12-18-10(e), Code 1975, and this opinion is hereby adopted as that of the court.

AFFIRMED.

All the judges concur.

April 15, 1994

s/ John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals of Alabama

APPENDIX II

ALABAMA COURT OF CIVIL APPEALS

AV 000143

Teddy Watson

Appellant

v.

Daniel Thomas and Cecile Thomas

Appellees

Application for rehearing overruled. No

opinion written on rehearing.

May 20, 1994.

s/John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals of Alabama

APPENDIX III

In THE SUPREME COURT OF ALABAMA

July 29, 1994

1931215

Ex parte Teddy Watson. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Teddy Watson v. Daniel Thomas and Cecile Thomas) (AV 93 000143) (Lowndes: CV-92-03)

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

INGRAM, J. - Hornsby, CJ, Maddox, Shores and Steagall,JJ., concur.

s/ Robert G. Esdale

Clerk, Supreme Court of Alabama

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the Writ of Certiorari was sent to Mr. Albert S. Butler, P.O. Box 4190 Montgomery, Alabama 36103 this 25 day of October 1994.

Julia Asam